SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 303

EX PARTE EDWARD WILLIAMS,

Petitioner,

vs.

JOHN J. GOLDEN, MARSHAL, CITY OF ST. LOUIS,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion of the Court Below.

The opinion of the Supreme Court of Missouri has not yet been officially recorded but appears on page 16 of the record.

Jurisdiction.

1. The judgment sought to be reviewed is a final judgment which has been rendered by the Supreme Court of Missouri (Div. No. 2), the highest court of that State in which a decision of the controversy could be had.

2. The date of the judgment to be reviewed is February 21, 1940 (R. 15).

3. Motion by petitioner for rehearing was filed in the Supreme Court of Missouri pursuant to the provision of Rule Twenty-one of that court, which motion for rehearing was duly considered and overruled by said court on the 4th day of May, 1940 (R. 28).

4. The specific claim advanced by petitioner in the lower court, decided adversely to him and which is relied upon as a basis of this Court's jurisdiction was that the ordinance of the City of St. Louis set forth in plaintiff's petition violated the Fourteenth Amendment of the Constitution of the United States and that the decisions of the Supreme Court of the State of Missouri was in favor of the constitutionality of the ordinance and further that the decision of the Supreme Court of Missouri was not in accord with the applicable decisions of this Court.

5. The statutory provision under which jurisdiction is invoked: Sec. 237 (b) Judicial Code (Title 28, Sec. 344, U. S. Code, Annotated).

6. Cases sustaining the jurisdiction of this Court:

Zucht v. *King*, 260 U. S. 174, 67 L. E. 194, 43 S. C. R. 24;

Lovell v. *City of Griffin*, 303 U. S. 444, 58 S. C. 666, 82 L. E. 949;

Schneider v. *State of New Jersey, Town of Irvington*, 308 U. S. 147, 84 L. E. 115;

Holmes v. *Jennison*, 14 Pet. 540-562, 10 L. E. 579.

Statement of Case.

The full statement of case has been given in the petition and in the interest of brevity, such statement is not repeated at this point.

Specification of Errors.

1. The court below erred in holding that the ordinance in question did not violate Section One, Fourteenth Amendment of the Constitution of the United States.

2. The court below erred in failing to grant the writ of *habeas corpus* as requested in petitioner's application.

3. The court below erred in failing to decide the question of the constitutionality of this ordinance as pleaded as in accordance with the applicable decisions of this Court.

Argument.

The basis for the application of this writ is the failure of the Supreme Court of Missouri to follow the decisions of this Court in the following cases:

Lovell v. *City of Griffin*, 303 U. S. 444, 58 S. C. 666, 82 L. E. 949;

Schneider v. *State of New Jersey, Town of Irvington*, 308 U. S. 147, 84 L. E. 115;

Cantwell v. *State of Conn.*, 60 Sup. Ct. 900.

It is the petitioner's contention that the three cases cited are the applicable cases in the construction of the ordinance.

All of the cases cited deal with the violation of an ordinance or statute similar to that in this case and hold the ordinance or statute unconstitutional.

It will be noticed from the opinion of the Supreme Court of Missouri (R. 19) the only case cited as the basis for declaring this ordinance constitutional is that of *Reetz* v. *Michigan*, 198 U. S. 505, 47 L. E. 563.

The *Reetz* case was decided by this Court in 1903 and pertains to a suit endeavoring to enforce the granting of a license to practice medicine. Certainly a decision of that nature can not apply to an ordinance that requires license for charitable, religious, patriotic and philanthropic purposes.

Under the decision of the Missouri Supreme Court the City of St. Louis is endeavoring to prosecute this defendant and others for failing to comply with the terms of the

ordinance in question and unless this Court sees fit to pass upon this ordinance, this defendant and those in similar positions are being deprived of the protection afforded by the Constitution of the United States.

The ordinance in question is even more drastic than those set forth in the cases heretofore cited as being the applicable decisions of this Court. The commission created by the terms of this ordinance is granted the right to revoke the license for a number of reasons, one of which is that "the solicitation is being conducted in a manner inimical to the public welfare of the community."

This provision allows the commission to determine as it sees fit, what is detrimental to public welfare. If a censorship of this nature be allowed to endure, the entire purpose of the Fourteenth Amendment is relegated to the waste basket and freedom of speech and press are a thing of the past.

The commission has the power to determine that the major political parties are patriotic organizations and that they cannot solicit funds in the City of St. Louis unless the entire structure of the organization comes under the supervision of the commission created and the money spent according to its dictates.

The sole contention of the officers of the City of St. Louis is that an ordinance of this nature is necessary to prevent fraud from being practiced on the public at large. This may be answered by a portion of the opinion of this Court in the case of *Schneider* v. *New Jersey*, in which the Court stated as follows:

> "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others

> may not, be carried to the homes of citizens; such persons may, while others may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press."

In consideration of the foregoing premises, the petitioner respectfully submits that this cause is one calling for the exercise by this Court of its supervisory powers in order that the errors of the lower court may be corrected and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Supreme Court of Missouri in this matter and finally reverse it.

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